



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Mr. Gary W. Smith
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR95-940

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30818.

The City of Greenville (the "city") received an open records request for a copy of the entire personnel file of a particular former city police officer. You inform us that the former officer is now employed by the Hunt County Sheriff's Office. We note that the city has adopted the Municipal Civil Service Provisions of the Local Government Code. *See* Local Government Code chapter 143.¹ The city contends that various items of information contained in the former officer's personnel file are excepted from required public disclosure pursuant to various sections of chapter 552 of the Government Code. You have submitted for our review a complete version of the personnel file as well as a redacted version, which you contend may be released to the requestor. Since the city urges that portions of the personnel file at issue are excepted by various sections of chapter 552 of the Government Code, we address each portion of the file the city seeks to withhold along with the city's arguments asserting exceptions for each portion of information.

¹Pursuant to section 143.089 of the Local Government Code, the city may maintain two personnel files on its police officers. We assume that the information requested is all located in the officer's personnel file described by section 143.089(a), commonly referred to as the civil service file. Generally, the information contained in a police officer's civil service personnel file may be released without the officer's written permission if the Open Records Act requires disclosure of the information. *See* Open Records Decision No. 562 (1990) at 6.

The city contends that the former officer's home address and telephone number are excepted from required disclosure by section 552.117 of the Government Code. We conclude that you must withhold from required disclosure the former officer's home address and home telephone number.

Regarding the former officer's social security number appearing on various documents in the file, we note that federal law may prohibit disclosure of the social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute.

You state that the personal history portion of the former officer's personnel file contains information that is excepted from required disclosure by sections 552.101 and 552.102 of the Government Code. Specifically, you contend that information about the names, addresses, telephone numbers, and ages of the former officer's relatives appearing in the document are protected from disclosure. You state that there exists no legitimate public interest in information that reveals the identity of the officer's close relatives. You have marked the portions of the file relating to the former officer's relatives that you contend is protected by section 552.101. Regarding a related type of information, you state that whether any of the former officer's relatives were police officers or city employees at the time of his appointment is of legitimate public interest and that you will disclose that information. Additionally, you contend that information in the personal history statement regarding the former officer's marital and family history may not be released to the requestor because to do so would invade the former officer's privacy.

Section 552.101 excepts from required public disclosure information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* In addition to common-law privacy, section 552.101 protects from disclosure matters that are deemed private pursuant to constitutional privacy. The *Industrial Foundation* court determined that constitutional

privacy, and thus section 552.101, protects matters within previously recognized and protected "zones of privacy"; these zones include matters relating to marriage, procreation, contraception, family relationships, child rearing, and education. 540 S.W.2d at 678. Once a determination is made that a matter is within a constitutionally protected zone of privacy, one must balance this privacy interest against the public's interest in access to such information. See Open Records Decision Nos. 628 (1994) at 5, 455 (1987) at 7. A determination of the applicability of constitutional privacy must be made on a case-by-case basis, weighing the individual's right to privacy against the public's interest in disclosure of the information. See Open Records Decision No. 455 (1987) at 7.

You concede that the public has a legitimate interest in knowing whether any of the former officer's relatives listed in the personal statement were officers or employees of the city and that this information may not be withheld from the requestor. See Open Records Decision No. 455 (1987) at 9. The information in the personal history statement regarding the former officer's relatives may not be withheld pursuant to section 552.101 as this information is not within his constitutional zone of privacy nor would release of this information invade his common-law right to privacy.

Among the documents that you contend are protected by privacy and are therefore also excepted from required public disclosure by section 552.101 are a copy of the former officer's marriage license and a copy of his divorce decree. Regarding the marriage license, we note that it is a document issued and recorded by a county clerk of the state. "All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times." Local Gov't Code § 191.006. You have shown no restrictions that would keep this particular marriage license closed to the public. Consequently, since the license is a publicly recorded document and absent any special restriction, the copy of the former officer's marriage license may not be withheld and must be released to the requestor. Regarding the copy of the former officer's divorce decree, we note that it is a court record which is a public document, and as such may not be withheld from the requestor. See *Star Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (no privacy interest in information found in public court documents).

After reviewing the former officer's marital and family history information at issue and weighing the public's interest in the information, we conclude that this information is not within the former officer's protected zone of privacy nor would its release invade his common-law right to privacy. Consequently, this information may not be withheld from required public disclosure pursuant to section 552.101 of the Government Code.

You contend that the portion of the officer's personal history statement in the personnel file that relates to professional organizations to which the former officer belonged is excepted from required disclosure by section 552.101 in conjunction with privacy. This office has previously held that this type of information may generally not be withheld from required public disclosure because of the public's interest in having

access to details concerning their governmental employees' professional backgrounds and experience outweighs any intrusion into the employees' privacy interests that might result from the release of this information. *See* Open Records Decision Nos. 441 (1986) at 3, 298 (1981) at 2. Consequently, you must release this portion of the officer's personal history statement.

You contend that the former officer's high school and college transcripts are protected from required disclosure by section 552.114 of the Government Code. Additionally, you contend that the public has no legitimate interest in the former officer's academic performance in high school or college since certification does not require either transcript. Consequently, you contend that to disclose this information would unnecessarily intrude on the former officer's privacy, therefore, the transcripts are excepted from disclosure by section 552.102.

Section 552.114 provides that information is excepted from required public disclosure "if it is information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.114 does not except transcripts from public disclosure when they are held by a governmental body other than an educational institution. *See* Open Records Decision No. 390 (1983). Consequently, the former officer's high school and college transcripts may not be withheld from the requestor pursuant to section 552.114. Additionally, the public generally has a legitimate interest in knowing the qualifications of its police officers which would include one's high school and college transcripts.

The requested records contain a copy of the former officer's certificate of birth registration. You contend that section 552.115 of the Government Code protects this document from required public disclosure. Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from required public disclosure "except that a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official." Since section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics, the city may not withhold the certificate of birth registration in the personnel file pursuant to that provision. *See* Open Records Decision No. 338 (1982). This document must be released to the requestor.

The personnel file also contains the former officer's W-4 and W4-A forms which you contend are excepted from required public disclosure pursuant to section 552.101. This office has determined that this information is excepted from required public disclosure pursuant to section 552.101 in conjunction with federal law. *See* Open Records Decision No. 600 (1992). You must withhold this information.

The personnel file also contains documents that appear to be criminal history record information ("CHRI") that have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information

which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. We have marked the driving record information that must be released.

You have marked several documents in the personnel file that you contend are excepted from required public disclosure because they reveal some of the former officer's personal financial decisions. You state that none of the financial information reflects expenditures made by the city for the former officer. We address the various types of financial information contained in the personnel records that you contend must be withheld pursuant to 552.101 and privacy.

Some of the documents included for our review are annual statements pertaining to participation in the Texas Municipal Retirement System (TMRS). You contend that this information is excepted from required disclosure pursuant to section 552.101 since these documents reflect decisions within the former officer's privacy. Section 855.115 of the Government Code governs release of member information produced or provided by TMRS. Since the requestor is not authorized by statute to receive the TMRS member account statement, you must not release the statement.²

²This ruling does not address whether other documents containing pension information that are held by the city and not obtained from TMRS, such as copies of employee pay statements and amounts withheld, are excepted from disclosure.

Additionally, you contend that information regarding specific payroll deductions that the individual authorized are personal financial decisions that are protected from required disclosure by the common-law right of privacy pursuant to section 552.101 of the Government Code. Because the government is not involved in contributing to these particular payroll deductions, you must withhold the documents setting forth the payroll deductions pursuant to section 552.101. *See* Open Records Decision No. 600 (1992).

Regarding the information in the personnel file that shows that the individual decided to enroll in additional health coverage, optional life, accident, dependent life, or disability income or the employee's choice of carrier is information not available to the public and is excepted from required disclosure pursuant to section 552.101 and the common-law right to privacy. *See* Open Records Decision No. 600 (1992) at 10. Additionally, the information about the officer's dependents' insurance coverage and the identities of the beneficiaries of his life insurance are excepted from disclosure by section 552.101. *Id.*

Among the records submitted for our review is a credit history report. We conclude that this document must be withheld since the information provided for our review does not indicate any special circumstances that would make the individual's personal financial information contained in the credit report a matter of legitimate public concern. *See* Open Records Decision No. 626 (1994) at 3.

Among the records in the former police officer's personnel file are documents prepared by a physician which you contend are confidential by statute and thus excepted from require public disclosure by section 552.101 of the Government Code. The medical records submitted are subject to the Medical Practice Act ("MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. Access to these records is governed by the MPA rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991) at 1; *see* Open Records Decision No. 565 (1990) (release of medical records). When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. You may release these records only as provided under the MPA.

You have identified a letter of appreciation from a caseworker for Dallas County Child Welfare in the personnel file that commends the former officer for his persuading an individual suspected of child abuse to accompany him to a hospital for a mental evaluation. Since the letter identifies the woman whom the former officer assisted to the hospital, you contend that her name must be withheld from public disclosure pursuant to section 552.101 of the Government Code in conjunction with her right to privacy. In the redacted version of the letter submitted for our review, you have deleted references to the

woman involved. We conclude that because this information is within the woman's right to privacy, you may redact the name of the woman the officer assisted to the hospital for a mental evaluation from the letter and release the redacted version of the letter.

You have marked two documents consisting of performance evaluations in the personnel file that you contend are excepted from required disclosure pursuant to section 552.111 of the Government Code. The purpose of this section is to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the governmental agency in connection with its decision-making processes. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). The scope of this exception applies only to internal communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of an internal communication. *Id.* A governmental body's policymaking functions do not encompass routine internal administrative and personnel matters, since disclosure of information relating to such matters will not inhibit free discussion among governmental agency personnel about policy issues. Open Records Decision No. 615 (1993) at 5. Since the performance evaluations at issue are routine internal personnel matters and do not reflect the policymaking of the city or the police department, we conclude that you may not withhold these two documents pursuant to section 552.111. These documents must be released to the requestor in their entirety.

Among the documents you have marked in the personnel file as excepted from required disclosure are two internal affairs records that the city obtained from the former officer's employer in the pre-employment investigation before he became a police officer for the city. The investigations occurred in 1977 and 1980 when the former officer was a police officer with the City of Dallas.³ You contend that sections 552.101, 552.102, 552.108, and 552.111 of the Government Code excepts the internal affairs records from required disclosure.

You state that one of the complaints was proven false by a Dallas Police department investigation. You contend that release of the information related to what was determined to be a false report would place the former officer in a false light. You state that though a police officer's conduct is generally of significant public interest, false accusations made against a police officer are not a matter of public concern. You contend that release of this information would violate the former officer's privacy rights and, therefore, the related investigation should be withheld from required public disclosure pursuant to section 552.101. We note that the privacy interests protected by

³The City of Dallas is not a municipal civil service city as provided for in chapter 144 of the Local Government Code. Consequently, the provisions in section 143.089 of the Local Government Code addressing the nondisclosure of unfounded complaints against police officers do not apply to unfounded complaints made against police officers in the City of Dallas.

section 552.101 do not encompass false-light privacy. Open Records Decision No. 579 (1990) at 3-8. Consequently, though the accusations were proved false, the city may not withhold the complaints under section 552.101.

Additionally, you contend that the investigations conducted by the Dallas Police Department should not be released because this in essence would be making available to the public the manner in which a law enforcement agency conducts investigations thus making it easier for members of the public "bent on violating the law to avoid detection, apprehension and conviction." You contend that for this reason the information in the internal affairs investigations should be withheld from required public disclosure pursuant to section 552.108 of the Government Code.

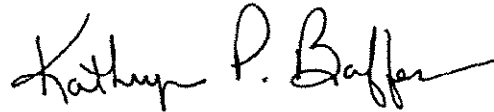
In order to secure the protection of this exception, the governmental body must demonstrate that release of the requested information will unduly interfere with law enforcement and crime prevention. *See Ex Parte Pruitt*, 551 S.W.2d 706, 709 (Tex. 1977); Open Records Decision No. 562 (1990) at 10. We note that the investigations into these instances occurred over ten years ago before the individual was employed by the city's police department. Additionally, the internal investigations were conducted by the Dallas Police Department not the city's police department. We have not been presented with any argument from the City of Dallas contending that the release of the requested information would unduly interfere with its law enforcement and crime prevention. After reviewing the investigatory records in the personnel file, we conclude that you have not demonstrated that the release of this information will unduly interfere with law enforcement and crime prevention.

You also contend that section 552.111 of the Government Code excepts the information in the internal affairs files because "the documents are filled with opinion and speculation of the officers who conducted the investigation." As previously noted, section 552.111 excepts information that reflects a governmental body's policymaking functions and does not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5. We have reviewed the affidavits and information contained in the internal investigation files. The affidavits of the officers relate factual information about what occurred during the incidents. We conclude that, since the information in the internal investigation files is not related to the policymaking functions of the police department of the city, the information in the internal investigation files may not be withheld pursuant to section 552.111. Since none of the asserted exceptions allow for withholding the internal affairs investigations, you must release this information to the requestor.

We note that a photograph of the officer is included with the Dallas internal affairs investigation file. Pursuant to section 552.119 of the Government Code, you must withhold the photograph of the officer unless the officer has given the city written consent to its disclosure.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Kathryn P. Baffes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/KHG/rho

Ref: ID# 30818

Enclosures: Marked documents

cc: Ms. Barbara R. Garrett
P.O. Box 1787
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(w/o enclosures)